

Notice of Allowability

Application No.

09/505,223

Applicant(s)

KAGLE ET AL.

Examiner

Brian C. Genco

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed June 10, 2005.
2. ☒ The allowed claim(s) is/are 1-3, 5, 8-11, 15, 17-19 and 25.
3. ☒ The drawings filed on 16 February 2000 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date June 21, 2005.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

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Applicant's amendment filed June 10, 2005 has overcome the grounds of rejection previously presented. In particular the amendment to claim 1 and Applicant's arguments have overcome the 35 USC 112, 1st paragraph rejections as well as the 35 USC 102(b) rejection of claims 1 and 3 by Miyamoto et al.

Further based on Applicant's arguments and the telephone conversation with Theodore Magee a rejoinder of claims 8-11 is being performed along with the cancellation of claims 4, 12, and 20.

Claims 1 and 17 are generic and allowable to Species III. Accordingly, the restriction requirement as to the encompassed species is hereby withdrawn and claims 8-11, directed to the species III are no longer withdrawn from consideration since all of the claims to this species depend from or otherwise include each of the limitations of an allowed generic claim. However, claims 4, 12, and 20, directed to the species of Species II remain withdrawn from consideration since they do not depend upon or otherwise include all the limitations of an allowed generic claim as required by 37 CFR 1.141.

In view of the above noted withdrawal of the restriction requirement as to the linked species, applicant(s) are advised that if any claim(s) depending from or including all the limitations of the allowable generic linking claim(s) be presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is

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withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

For clarification of the record, Examiner notes that the rejoinder of claims 8-11 is being performed since the embodiment of Fig. 6 is a method for verifying a pre-capture process in the post-capture processing. As such, the controls of when to capture an image using a half-press and full-press of the shutter button can be used in conjunction with the embodiment of Fig. 6 simply by placing the verification routine of Fig. 6 in step 532 of Fig. 5. However, the same is not true for the red-eye correction embodiment of Fig. 4. Here a first flash and capture of image data is performed in order to determine the proper flash for the main flash and subsequently the main flash is triggered and another image is captured. If the verification result of the embodiment of Fig. 6 was used as the post-capture processing step 494 of Fig. 4 then should the comparison of step 606 fail a third flash and third image capture operation would need to be performed contrary to the teaching of the embodiment of Fig. 6 of performing the pre-capture process on all image data for the second frame of light.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Theodore Magee on June 21, 2005.

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The application has been amended as follows:

Cancel claims 4, 12, and 20.

Claims 1-3, 5, 8-11, 15, 17-19, and 25 are herein deemed allowable over the prior art of record, the reasons for allowance are as follows:

In regards to claim 1 there is no teaching or suggestion in the prior art to perform at least one pre-capture processing function on a portion of the second set of image data to produce a test result and comparing the test result to the pre-capture result in combination with the other claim limitations.

Claims 2, 3, 5, 8-11, and 15 depend from claim 1.

The reasons for allowance of claim 17 is substantially similar to that for claim 1.

Claims 18, 19, and 25 depend from claim 17.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian C. Genco who can be reached by phone at 571-272-7364 or by fax at 571-273-7364. The examiner can normally be reached on Monday thru Friday 8:30am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Ometz can be reached at 571-272-7593.

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The fax phone number for the organization where this application or proceeding is assigned is currently (703) 872-9306. On July 15, 2005 the fax number will change to 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the customer service office whose telephone number is 571-272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Brian C Genco
Examiner
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June 21, 2005


DAVID L. OMETZ
PRIMARY EXAMINER